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Shirley Celcis

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SHIRLEY CELCIS,

Plaintiff,

v.

PROG LEASING, LLC,

Defendant.

Civil Action No.: _____

COMPLAINT

For this Complaint, Plaintiff, Shirley Celcis, by undersigned counsel, states
as follows:

JURISDICTION

1. This action arises out of Defendant's violations of the Telephone
Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA") by negligently,

1 knowingly, and/or willfully placing automated calls to Plaintiff's cellular phone
2 without consent, thereby violating the TCPA.

3 2. This action is also brought under Nevada Revised Statutes Chapter
4 598.0918 ("NRS 598") and Nevada Revised Statutes Chapter 41.600 *et seq.* ("NRS
5 41.600") for Defendant's deceptive trade practices as further described herein.

6 3. Plaintiff alleges as follows upon personal knowledge as to Plaintiff
7 and Plaintiff's own acts and experiences, and, as to all other matters, upon
8 information and belief, including investigation conducted by Plaintiff's attorneys.

9 4. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 and this
10 Court has original jurisdiction over Plaintiff's TCPA claims. *Mims v. Arrow Fin.*
11 *Serv., LLC*, 132 S.Ct. 740 (2012).

12 5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) &
13 (c), because Plaintiff resides within the District of Nevada, a substantial portion of
14 the events or omissions giving rise to the claim occurred in this District, and
15 Defendant regularly conducts business in this District.

16 **PARTIES**

17 6. Plaintiff Shirley Celcis ("Plaintiff") is an adult individual residing in
18 Las Vegas, Nevada.

19 7. Plaintiff is, and at all times mentioned herein was, a "person" as
20 defined by 47 U.S.C. § 153(39).

1 8. Defendant Prog Leasing, LLC is doing business in the State of
2 Nevada.

3 9. Defendant is, and at all times mentioned herein was, a corporation and
4 is a “person,” as defined by 47 U.S.C. § 153 (39).
5

6 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**
7

8 10. In 1991, Congress enacted the TCPA in response to a growing number
9 of consumer complaints regarding certain telemarketing practices.
10

11 11. The TCPA regulates, among other things, the use of automated
12 telephone dialing systems.

13 12. 47 U.S.C. § 227(a)(1) defines an automatic telephone dialing system
14 (“ATDS”) as equipment having the capacity –
15

16 (A) to store or produce telephone numbers to be called,
17 using a random or sequential number generator; and

18 (B) to dial such numbers.
19

20 13. Consumers have a right to revoke consent from receiving autodialed
21 calls or prerecorded messages by using any reasonable method including orally or
22 in writing. *Gager v. Dell Fin. Servs., LLC*, 12-2823, 727 F.3d 265, 2013 U.S. App.
23 LEXIS 17579, 2013 WL 4463305 (3d Cir. Aug. 22, 2013).
24

25 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
26

27 14. Within the four years prior to filing the instant complaint, Plaintiff
28 received numerous calls from Defendant Prog Leasing, LLC.

1 15. Upon information and belief, Defendant employs an automatic
2 telephone dialing system (“ATDS”) which meets the definition set forth in 47 U.S.C.
3 § 227(a)(1).
4

5 16. Upon information and belief, Defendant Prog Leasing, LLC uses its
6 ATDS to store telephone numbers it intends to calls by using a random or sequential
7 number generation system and then called those numbers, including Plaintiff’s
8 cellular telephone number ending “4326.”
9

10 17. Defendant or its agent/s contacted Plaintiff on Plaintiff’s cellular
11 telephone number via an ATDS as defined by 47 U.S.C. § 227(a)(1), as prohibited by
12 47 U.S.C. § 227(b)(1)(A).
13

14 18. In the majority of the calls Plaintiff did not answer, Defendant’s system
15 left an automated, artificial or prerecorded voice message for Plaintiff on her cellular
16 telephone.
17

18 19. In the calls Plaintiff did answer, there was an indication that the calls
19 were automated and called in a random or sequential number generation system
20 because there would be a short pause lasting about two to three seconds between the
21 time the calls were answered and the time a live agent was introduced as a
22 representative from Defendant.
23

24 20. Upon information and belief, based on the pause and lack of prompt
25 human response during the phone calls in which Plaintiff answered, Defendant used a
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1 predictive dialing system that uses a random or sequential dialing system to store and
2 then placed calls to Plaintiff.

3 21. “A predictive dialer is equipment that dials numbers and, when certain
4 computer software is attached, also assists [caller] in predicting when an [agent] will
5 be available to take calls. The hardware, when paired with certain software, has the
6 capacity to store or produce numbers and dial those numbers at random, in sequential
7 order, or from a database of numbers.” *Meyer v. Portfolio Recovery Associates, LLC*,
8 707 F.3d 1036, 1043 (9th Cir. 2012).

9 22. Upon information and belief, the predictive dialing system employed by
10 Defendant transfers the call to a live agent once a human voice is detected, thus
11 resulting in a pause after the called party speaks into the phone.

12 23. In September 2020, Plaintiff instructed Defendant or its agent not to call
13 Plaintiff’s cell phone ever again thereby revoking consent, if any ever existed, to be
14 contacted by Defendant via an ATDS.

15 24. Moreover, Defendant did not have prior express consent to place any
16 automated or prerecorded calls to Plaintiff on Plaintiff’s cellular telephone at any
17 time.

18 25. However, Defendant placed calls to Plaintiff’s cellular telephone
19 without consent using an ATDS in violation of the TCPA.
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1 26. Upon information and belief, Defendant's ATDS has the capacity to
2 store or produce telephone numbers to be called, using a random or sequential
3 number generator, and was used thusly in contacting Plaintiff.
4

5 27. The telephone number Defendant used to contact Plaintiff was and is
6 assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).
7

8 28. Defendant's calls to Plaintiff's cellular telephone were not for
9 "emergency purposes."
10

11 29. Pursuant to the TCPA, the burden is on Defendant to demonstrate it had
12 prior express consent to call Plaintiff's cellular phone with an ATDS.
13

14 30. While very minor, Plaintiff suffered actual harm and loss, since each of
15 the unwanted calls depleted Plaintiff's cell phone's battery, and the cost of electricity
16 to recharge the phone is a tangible harm. While small, this cost is a real one, and the
17 cumulative effect can be consequential, just as is true for exposure to X-rays resulting
18 from Defendant's unwanted phone calls to Plaintiff's cell phone.
19

20 31. However, Plaintiff also suffered from an invasion of a legally protected
21 interest by placing calls to Plaintiff's personal phone line when Defendant had no
22 right to do so, resulting in an invasion of Plaintiff's right to privacy. The TCPA
23 protects consumers from precisely this behavior.
24

25 32. Plaintiff has a common law right to privacy. *E.g.*, Samuel D. Warren &
26 Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 1155, 193 (1890).
27
28

1 Congress sought to further protect that right by enacting the TCPA.

2 33. “[W]hen a person must endure the bother of unwanted calls in the
3 privacy of her home, her harm is similar to other traditional injuries that courts have
4 long recognized, such as invasion of privacy and nuisance.” *Toldi v. Hyundai*
5 *Capital Am.*, No. 2:16-CV—01877-APG-GWF, 2017 WL 736882, at *2 (D. Nev.
6 Feb. 23, 2017).

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9 34. Plaintiff was also personally affected, since Plaintiff felt Plaintiff’s
10 privacy had been invaded when Defendant placed automated calls to Plaintiff’s
11 phone line without any consent to do so.

12
13 35. The injury suffered by Plaintiff is concrete because Defendant’s
14 violations caused Plaintiff to suffer an invasion of privacy.

15 COUNT I

16 **Negligent Violations of the** 17 **Telephone Consumer Protection Act,** 18 **(47 U.S.C. § 227, et seq.)**

19
20 36. Plaintiff repeats and realleges the above paragraphs of this Complaint
21 and incorporates them herein by reference.

22
23 37. Defendant negligently placed multiple automated calls to cellular
24 numbers belonging to Plaintiff without Plaintiff’s prior express consent.

25
26 38. Each of the aforementioned calls by Defendant constitutes a negligent
27 violation of the TCPA.

1 39. As a result of Defendant's negligent violations of the TCPA, Plaintiff
2 is entitled to an award of \$500.00 in statutory damages for each call in violation of
3 the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).
4

5 40. Additionally, Plaintiff is entitled to and seek injunctive relief
6 prohibiting such conduct by Defendant in the future.
7

8 **COUNT II**

9 **Knowing and/or Willful Violations of the**
10 **Telephone Consumer Protection Act,**
11 **(47 U.S.C. § 227, *et seq.*)**

12 41. Plaintiff repeats and realleges the above paragraphs of this Complaint
13 and incorporates them herein by reference.
14

15 42. Defendant knowingly and/or willfully placed multiple automated calls
16 to cellular numbers belonging to Plaintiff without Plaintiff's prior express consent.
17

18 43. Each of the aforementioned calls by Defendant constitutes a knowing
19 and/or willful violation of the TCPA.

20 44. As a result of Defendant's knowing and/or willful violations of the
21 TCPA, Plaintiff is entitled to an award of treble damages up to \$1,500.00 for each
22 call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
23 227(b)(3)(C).
24

25 45. Additionally, Plaintiff is entitled to seek injunctive relief prohibiting
26 such conduct by Defendant in the future.
27
28

COUNT III

**Defendant's Violations of Nevada's
Deceptive Trade Practices Act
(NRS 598.0918)**

46. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

47. "Solicitation" means "the act of... seeking to obtain" something – in this case money. *Solicitation*, Black's Law Dictionary (2d Pocket Ed. 2001).

48. Here, Defendant solicited Plaintiff to seek or obtain money from Plaintiff.

49. On March 13, 2001, Assembly Bill 337 (AB 337) was introduced to the Nevada State Legislature. AB 337 revised Nevada's Deceptive Trade Practices statutes codified at NRS 598 et seq.

50. As expressed by Marilyn Skibinski, Regulatory Analyst, Bureau of Consumer Protection, AB 337 was enacted to "provide[] additional protection for consumers." *See Minutes of the Meeting of the Assembly Committee on Commerce and Labor*, 71st Session, April 4, 2001, page 1082, which can be viewed at <http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/2001/AB337,2001.pdf> ("AB 337 Minutes").

51. Further, AB 337 was specifically intended to apply to companies (like Defendant) using "automatic calling" or automated dialing systems. As Ms.

1 Rushton stated in response to Senator Maggie Carlton, “[that] is exactly what [AB
2 337 is intended to do.” *Id.* at page 4093.

3 52. In specific, AB 337 made it a deceptive trade practice to, during a
4 solicitation by telephone, to:

- 5
- 6 a. Repeatedly or continuously conduct the solicitation or presentation in
7 a manner that is considered by a reasonable person to be annoying,
8 abusive or harassing;
 - 9 b. Solicit a person by telephone at his or her residence between 8 p.m.
10 and 9 a.m.
 - 11 c. Block or otherwise intentionally circumvent any service used to
12 identify the caller when placing an unsolicited telephone call; or
 - 13 d. Place an unsolicited telephone call that does not allow a service to
14 identify the caller by the telephone number or name of the business,
15 unless such identification is not technically feasible.

16 53. Defendant repeatedly and continuously placed telephone calls to
17 Plaintiff’s residential phone (which is also Plaintiff’s cellular phone) to solicit
18 money from Plaintiff in a manner that would be considered annoying, abusive, or
19 harassing by a reasonable person.

20 54. Specifically, Defendant placed calls to Plaintiff’s cell phone even
21 after Plaintiff demanded Defendant cease calls to Plaintiff. Such conduct is
22 unquestionably harassing and annoying.

23 55. As a direct consequence of Defendant’s harassing phone calls, acts,
24 practices, and conduct, Plaintiff suffered and continues to suffer from anger,
25 anxiety, emotional distress, frustration, rage, headaches, an upset stomach, heart
26 palpitations, and has otherwise been totally annoyed by Defendant’s intrusive and
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1 illegal phone calls. Plaintiff has also lost the use of personal and family time while
2 enduring these frustrations, as well as lost time and minutes from cell phone use,
3 for which Plaintiff is charged a fee.
4

5 56. Defendant's violations of NRS 598.0918 constitute violations of NRS
6 41.600 and Plaintiff is entitled to relief under NRS 41.600.
7

8 **COUNT IV**

9 **Invasion of Privacy** 10 **Intrusion into Seclusion**

11 57. Plaintiff incorporates by reference all of the paragraphs of this
12 Complaint as though fully stated herein.
13

14 58. Nevada recognizes the common law tort for an invasion of privacy of
15 intrusion into seclusion finding "[r]epeated and continuous calls in an attempt to
16 collect a debt give rise to a claim for intrusion upon seclusion." *Peatrowsky v.*
17 *Persolve*, No. 2:12-cv-00935-JAD-VCF, 2014 U.S. Dist. LEXIS 38320, at *26-27
18 (D. Nev. Mar. 24, 2014).
19
20

21 59. Further, Congress explicitly recognized a consumer's inherent right to
22 privacy in collection matters in passing the Fair Debt Collection Practices Act,
23 when it stated as part of its findings:
24

25 **Abusive debt collection practices contribute** to the number of
26 **personal bankruptcies, to marital instability, to the loss of jobs, and**
27 **to invasions of individual privacy.**

28 15 U.S.C. § 1692(a) (emphasis added).

1 60. Defendant and/or its agents intentionally and/or negligently interfered,
2 physically or otherwise, with the solitude, seclusion, and/or private concerns or
3 affairs of this Plaintiff, namely, by repeatedly and unlawfully inundating Plaintiff
4 with phone calls as discussed above and thereby invaded Plaintiff's privacy as
5 expressed in the foregoing. To recap however, these invasions included a
6 persistent disregard of Plaintiff's demands that Defendant cease these intrusive
7 communications. Indeed, Plaintiff's attempts to curb Defendant's collection
8 communications fell on deaf ears.
9
10

11
12 61. As a result, Defendant flagrantly disrespected Plaintiff's right to live
13 peaceably and in solitude. Defendant simply knew better, but as a business policy
14 disregards rights of consumers like Plaintiff regardless of the personal costs to
15 Plaintiff's common law right to solitude and peace.
16

17 62. Plaintiff had a reasonable expectation of privacy in Plaintiff's
18 solitude, seclusion, private concerns, and/or affairs.
19

20 63. Defendant's conduct in engaging in the above-described illegal
21 collection conduct against this Plaintiff, resulted in multiple intrusions and
22 invasions of privacy which occurred in a way that would be highly offensive to a
23 reasonable person in that position.
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25
26 64. As a result of such intrusions and invasions of privacy, Plaintiff is
27 entitled to actual damages in an amount to be determined at trial from Defendant,
28

as well as punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant awarding Plaintiff:

1. injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
2. statutory damages of \$500.00 for each and every call made in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
3. treble damages of up to \$1,500.00 for each and every call made in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
4. actual damages including, but not limited to, the emotional distress Plaintiff has suffered (and continues to suffer) as a result of the intentional, reckless, and/or negligent violations of NRS 598.0918 as permitted under NRS 41.600;
5. actual damages and punitive damages for Defendant's privacy violations;

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///

1 6. attorney's fees and costs to counsel for Plaintiff; and

2 7. such other relief as the Court deems just and proper.

3 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

4
5 Dated: January 4, 2022

6 Respectfully submitted,

7
8 By /s/ David Krieger, Esq.

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